

# **THE STATE OF NEW HAMPSHIRE**

## **SUPREME COURT**

**In Case No. 2007-0027, Daniel Brennan v. City of Manchester, the court on September 10, 2007, issued the following order:**

The appellant, the City of Manchester (City), appeals orders of the superior court denying its motion to dismiss and cross-motion for summary judgment and granting the motion for summary judgment of the appellee, Daniel Brennan. On appeal, the City argues: (1) the superior court lacked jurisdiction over this matter; (2) even if the superior court had jurisdiction, its analysis of the relevant law and contracts was flawed in various respects, including that Brennan's claim was not barred by the statute of limitations; and (3) the superior court lacked authority to award attorney's fees. We reverse.

The relevant facts are not disputed. Brennan was first employed as a police officer in the City in 1986. When he resigned in early 2001, he was paid for the sick leave credit that he had accumulated. Shortly thereafter, the City wrote to Brennan informing him that the payment for his sick leave credit was in error, and that he was required to repay the money. In October 2001, the City rehired Brennan as a police officer. As a condition of his reemployment, he agreed to refund all of the money paid him upon his resignation. By September 2002, Brennan had repaid all of the money. The City did not restore the sick leave credit. When Brennan retired in 2005 he was paid for the sick leave credit he had accumulated between 2001 and 2005.

Shortly before retiring in 2005, Brennan filed a petition for declaratory judgment in the superior court arguing that, under the City's ordinances, he was entitled either to have the sick leave credit earned between 1986 and 2001 restored, or to retain the money originally paid him upon his resignation in 2001. The superior court denied the City's motions to dismiss and for summary judgment, and granted Brennan's motion for summary judgment. This appeal followed.

The City argues, among other things, that even presuming the superior court had jurisdiction over the petition, it erred in denying the City's motion to dismiss Brennan's petition as barred by the statute of limitations. See RSA 508:4 (1997). According to the City, by his petition, Brennan sought to establish his right to receive payment for the sick leave he had accumulated between 1986 and his resignation in 2001. Therefore, the City contends, Brennan's right to file the petition arose in 2001 when it disputed his right to

payment and requested that he return the money. Alternatively, the City contends that Brennan could have brought the petition when he signed the repayment agreement in 2001, thereby acknowledging the City's claim. In either case, the City argues that, because Brennan could have filed his petition in 2001 and did not do so until September 2005, the action was barred by the statute of limitations and should have been dismissed.

Brennan counters that, because he was required to repay the City as a condition of his reemployment, he could not claim an entitlement to the restoration of the sick leave credit until all of the money was repaid. Therefore, he contends, he could not file the petition until the final payment was made in September 2002. In the alternative, he contends that his cause of action did not arise until he suffered an economic loss when he was not paid at the time of his retirement in December 2005. Brennan also invokes the general proposition that partial payment of a debt tolls the statute of limitations.

The trial court ruled that the issue is "not whether Officer Brennan should be paid for accrued sick leave. Rather, the issue [is] whether Officer Brennan is currently entitled to sick leave credit subject to payment in the future." Thus, it determined that, because a current right was at issue, the petition was not barred by the statute of limitations.

For purposes of this order, we assume, without deciding, that the superior court had jurisdiction over Brennan's petition. RSA 508:4 provides that all personal actions must be brought within three years of the date of the act or omission complained of, subject to certain exceptions. Brennan does not argue that RSA 508:4 does not apply, nor does he argue that any exceptions to the statute's three-year requirement apply. Instead, he argues only that his right to file the declaratory judgment petition arose at a time other than that claimed by the City. Therefore, we need only determine when Brennan was first entitled to bring his petition.

RSA 491:22, I (1997) provides, in relevant part: "Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive." Therefore, a person is entitled to file a petition for declaratory judgment when he claims a present right adverse to another's claim of right.

Brennan's petition requested that the trial court:

A. Issue a declaratory judgment in favor of the Petitioner recognizing that Officer Daniel Brennan is entitled to sick leave pay credit or the sick pay monies he repaid to the City of Manchester upon his return to employment with the City

of Manchester pursuant to Section 33.081(H)(3) [of Manchester's Code of Ordinances].

Section 33.081(H)(3) of the City's ordinances states:

On separation from service other than by retirement, duty disability retirement, death, or other circumstances provided above, any employee with 15 consecutive years of city service, provided separation is other than by discharge or resignation in lieu of discharge, shall be paid all accrued sick leave benefits.

In relying upon § 33.081(H)(3), Brennan sought to enforce his right under that section to be paid for the credit accrued during 15 years of service. By the plain terms of the ordinance, his right to payment arose "on separation from service." Therefore, Brennan's right arose when he resigned in 2001. The City first raised a claim adverse to that right when it requested the return of the money in 2001. Thus, Brennan was entitled, at that time, to file a petition for declaratory judgment to establish his right to payment for his sick leave credit or for restoration of the credit in lieu of payment. Moreover, in October 2001, Brennan had acknowledged that the City had a claim adverse to his when he was rehired and signed the repayment agreement. Therefore, Brennan first could have filed a petition for declaratory judgment in 2001, and, by failing to file the petition until 2005, he was barred by RSA 508:4.

Brennan next contends that he was not entitled to file the petition until he suffered an economic loss at his retirement in 2005. We disagree. Any economic loss Brennan suffered as a result of being denied payment for his sick leave occurred in 2001. Therefore, even assuming that an economic loss was a prerequisite to the filing of a petition for declaratory judgment, that loss was realized in 2001, when the City informed Brennan that he was not entitled to payment.

Regarding his contention that partial payment of a debt tolls the statute of limitations, such tolling only affects an action brought on the debt itself. Thus, if the parties disputed Brennan's payment of the debt, the statute of limitations would be tolled by his partial payment. Because, however, this action relates to his right to have received the money in the first instance, and not whether he has satisfied a debt, this proposition does not apply.

Finally, as to the trial court's understanding that the issue was whether Brennan had a current entitlement to sick leave credit that was to be paid in the future, for the reasons previously set forth, we do not agree.

Because Brennan was entitled to bring a petition for declaratory judgment in 2001, and because he did not do so until 2005, his petition was

barred by the statute of limitations in RSA 508:4. Since we reverse the decision of the trial court on the ground stated, we need not reach the other issues raised by the City.

Reversed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**